UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER
NAJARIAN, LENA

ART UNIT	PAPER NUMBER
3686	

NOTIFICATION DATE	DELIVERY MODE
05/29/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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	Application No.	Applicant(s)
Office Action Summary	10/789,727	JONES ET AL.
	Examiner	**Art Unit**	
	LENA NAJARIAN	3686	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on <u>20 April 2009</u>.

2a) ☐ This action is **FINAL**.   2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) <u>1-12,14-19,22-26,28 and 29</u> is/are pending in the application.

    4a) Of the above claim(s) <u>1-8</u> is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) <u>9-12,14-19,22-26,28 and 29</u> is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☐ All   b) ☐ Some * c) ☐ None of:

      1. ☐ Certified copies of the priority documents have been received.

      2. ☐ Certified copies of the priority documents have been received in Application No. _____.

      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date <u>20090216; 20080208; 20051015; 20040726</u>.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____ .

DETAILED ACTION

Election/Restrictions

1.   Applicant's election without traverse of claims 9-12, 14-19, 22-26, 28, and 29 in the reply filed on 4/20/09 is acknowledged.

2.   Claims 1-8 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to nonelected inventions, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 4/20/09.

Claim Objections

3.   Claim 15 is objected to because of the following informalities: delete "is provided" in line 3. Appropriate correction is required.

4.   Claim 28 is objected to because of the following informalities: delete "is" in line 2. Appropriate correction is required.

Claim Rejections - 35 USC § 112

5.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6.   Claims 9-12, 14-19, 25, and 26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7.   Claims 9-11 recite the limitation "the data stream" in line 9 of claim 9, line 3 of

claim 10, and line 3 of claim 11. There is insufficient antecedent basis for this limitation

in the claims.

8.   Claims 10, 11, and 25 recite the limitation "the converted data stream" in line 4 of

claim 10, lines 4 & 6 of claim 11, and lines 3 & 5 of claim 25. There is insufficient

antecedent basis for this limitation in the claims.

9.   Claims 12, 14-19 and 26 incorporate the deficiencies of claims 9-11 and 25,

through dependency, and are also rejected.

Claim Rejections - 35 USC § 102

10.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

11.   Claims 9-12, 14, 18, 19, and 22-26 are rejected under 35 U.S.C. 102(e) as being

anticipated by Webb (US 6,644,322 B2).

(A) Referring to claim 9, Webb discloses a system for controlling distribution of medical

data, the system comprising (abstract of Webb):

a microprocessor based controller (Fig. 3 and col. 15, lines 32-42 of Webb);

a computer readable medium, wherein the computer readable medium includes instructions executable by the microprocessor based controller to (col. 4, lines 10-29 of Webb):

receive a data set in a first format from an implantable medical device (col. 3, lines 36-49 of Webb);

identify a group associated with the implantable medical device, wherein the group is one of a plurality of groups (col. 4, lines 16-29 of Webb);

select an interpreter associated with the group (Fig. 9 and col. 10, lines 36-40 of Webb); and

apply the interpreter to the data stream, wherein the data stream is converted from the first format to a second format (Fig. 9, abstract, and col. 10, lines 36-40 of Webb).

(B) Referring to claim 10, Webb discloses wherein the computer readable medium further includes instructions executable by the microprocessor based controller to: store the data stream in the first format to a raw database; and store the converted data stream in the second format to a comprehensive database (col. 7, line 52 – col. 8, line 15 and col. 8, line 54 – col. 9, line 5 of Webb).

(C) Referring to claim 11, Webb discloses wherein the computer readable medium further includes instructions executable by the microprocessor based controller to: store the data stream in the first format to a raw database; store a first portion of the

converted data stream in the second format to a first subset database; and store a second portion of the converted data stream in the second format to a second subset database (col. 7, line 52 – col. 8, line 15 and col. 8, line 54 – col. 9, line 5 of Webb).

(D) Referring to claim 12, Webb discloses wherein the computer readable medium further includes instructions executable by the microprocessor based controller to: access the raw database; generate at least one of the first subset database and the second subset database (col. 8, line 65 - col. 9, line 5 of Webb).

(E) Referring to claim 14, Webb discloses wherein the first subset database includes patient specific information and the second subset database includes diagnostic limited information (abstract and col. 3, lines 50-62 of Webb).

(F) Referring to claim 18, Webb discloses wherein the data set in the first format from the implantable medical device is received via a communication network (Fig. 1 and col. 6, lines 5-27 of Webb).

(G) Referring to claim 19, Webb discloses wherein the data set in the first format from the implantable medical device is gathered by a gathering device selected from a group consisting of: a device group specific programmer, a bedside monitor, and a mobile monitor (Fig. 7 and col. 20, line 66 – col. 21, line 9 of Webb).

(H) Referring to claim 22, Webb discloses a method for accessing and utilizing medical information, the method comprising (abstract of Webb):

receiving a data set in a first format from an implantable medical device via a communication network (col. 3, lines 36-49 and Fig. 1 of Webb);

identifying an interpreter associated with the implantable medical device, wherein the interpreter is one of a plurality of interpreters (Fig. 9, col. 10, lines 36-40, and col. 7, line 52 – col. 8, line 41 of Webb); and

applying the interpreter to the data set, wherein the data set is converted from the first format to a second format (Fig. 9, col. 10, lines 36-40, and col. 7, line 52 – col. 8, line 41 of Webb).

(I) Referring to claim 23, Webb discloses wherein the communication network is selected from a group consisting of: the Internet, a cellular telephone network, a public switched telephone network, a local area network, a wide area network, and a virtual private network (col. 6, lines 5-27 of Webb).

(J) Referring to claim 24, Webb discloses storing the first data set in the first format to a raw database (col. 7, line 52 – col. 8, line 15 of Webb); and storing the converted data set in the second format to a comprehensive database (col. 8, line 54 – col. 9, line 5 of Webb).

(K) Referring to claim 25, Webb discloses storing the first data set in the first format to a raw database (col. 7, line 52 – col. 8, line 15 of Webb); and storing a first portion of the converted data stream in the second format to a first subset database (col. 8, line 54 – col. 9, line 5 of Webb) ; and storing a second portion of the converted data stream in the second format to a second subset database (col. 8, line 54 – col. 9, line 5 of Webb).

(L) Referring to claim 26, Webb discloses accessing the raw database; and generating at least one of the first subset database and the second subset database (col. 8, line 65 - col. 9, line 5 of Webb).

Claim Rejections - 35 USC § 103

12.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

13.   Claims 15-17, 28, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Webb (US 6,644,322 B2) in view of Kim (US 2003/0212576 A1).

(A) Referring to claim 15, Webb does not expressly disclose wherein the computer readable medium further includes instructions executable by the microprocessor based controller to: provide a portion of the diagnostic limited information is provided to a plurality of recipients; receive a diagnosis data associated with the portion of the diagnostic limited information from at least one of the plurality of recipients; and store the diagnosis data to the second subset database.

Kim discloses wherein the computer readable medium further includes instructions executable by the microprocessor based controller to: provide a portion of the diagnostic limited information is provided to a plurality of recipients (para. 68-71 of Kim); receive a diagnosis data associated with the portion of the diagnostic limited

information from at least one of the plurality of recipients (para. 68-71 of Kim); and store the diagnosis data to the second subset database (para. 72-75 of Kim).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the aforementioned features of Kim within Webb. The motivation for doing so would have been to suggest diagnoses based on information collected by the system (para. 25 of Kim).

(B) Referring to claim 16, Webb does not expressly disclose wherein the computer readable medium further includes instructions executable by the microprocessor based controller to: receive a diagnosis query, wherein the diagnosis query includes a specific diagnostic limited data, compare the specific diagnostic limited data to at least a portion of the diagnostic limited information, wherein a closest match is determined; and provide a diagnosis based at least in part on the closest match.

Kim discloses wherein the computer readable medium further includes instructions executable by the microprocessor based controller to: receive a diagnosis query, wherein the diagnosis query includes a specific diagnostic limited data, compare the specific diagnostic limited data to at least a portion of the diagnostic limited information, wherein a closest match is determined; and provide a diagnosis based at least in part on the closest match (para. 25, para. 69, para. 71, and para. 89-91 of Kim).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the aforementioned features of Kim within Webb. The

motivation for doing so would have been to suggest diagnoses based on information collected by the system (para. 25 of Kim).

(C) Referring to claim 17, Webb discloses wherein the computer readable medium further includes instructions executable by the microprocessor based controller to: receive a data set comprising objective data collected by a physician (col. 3, line 63 – col. 4, line 4 of Webb).

Webb does not disclose: receive a data set comprising subjective data collected by a physician.

Kim discloses receiving a data set comprising subjective data collected by a physician (para. 34 and para. 89 of Kim).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the aforementioned features of Kim within Webb. The motivation for doing so would have been to have a complete record of a physician's findings in order to provide an accurate diagnosis (para. 89-91 of Kim).

(D) Claims 28 and 29 repeat substantially the same limitations as claims 15 and 16 and are therefore rejected for the same reasons given above.

Conclusion

14.   The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited but not applied prior art teaches a system, method, and process for analysis of patient treatment protocols (US 2001/0053984 A1).

15.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to LENA NAJARIAN whose telephone number is (571) 272-7072. The examiner can normally be reached on Monday - Friday, 9:30 am - 6:00 pm.

16.   If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry O'Connor can be reached on (571) 272-6787. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or (571) 272-1000.

/L. N./
Examiner, Art Unit 3686
ln
5/22/09

/Gerald J. O'Connor/
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